

BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF:

Case No.: 3343

MICHAEL L. DUBETS, D.O.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND AMENDED ORDER

Holder of License No. 2589

**For the practice of osteopathic medicine in the
State of Arizona**

This matter came before the Arizona Board of Osteopathic Examiners in Medicine and Surgery (hereafter "Board") for action on a "Motion for Reconsideration" filed on behalf of Daniel L. Dubets, D.O. (hereinafter "Respondent") of the Board's prior decision in this matter at the Board's public meeting held on March 18, 2006. Pursuant to its authority of A.A.C. R4-22-106, the Board considered Respondent's request for reconsideration of the Findings of Fact, Conclusions of Law and Order for Probation issued on January 26, 2006. During the course of these proceedings, the Respondent was present and represented by legal counsel, Robert D. Bohm.

The board heard arguments requesting a review or rehearing regarding the terms of its Order of Probation. The board voted to review its previous Order limited to only the terms of that Probation and not its Findings of Fact nor Conclusions of Law. Following additional arguments and discussion, the board voted to amend its previous order of probation as follows:

JURISDICTIONAL STATEMENTS

1. The Board is empowered, pursuant to A.R.S. § 32-1800 et seq., to regulate the practice of osteopathic medicine in the State of Arizona, and the conduct of the persons licensed, registered, or permitted to practice osteopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 2589 issued by the Board for the practice

1 of osteopathic medicine in the State of Arizona.

2 **FINDINGS OF FACT**

3 4. On April 12, 2004, the Board received a complaint from AN alleging that the
4 Respondent alleging that:

- 5 a. "Recently within the last three months (Respondent) has been showing up
6 to work on and off intoxicated, under the influence of alcohol."
7 b. "I feel more strongly that the safety of the patients could be compromised
8 in this situation."
9 c. "Back on January 20, 2004 Dr. Dubets showed up drunk, . . ." (at work)
10 d. "Recently on March 15, 2004 a day that (Respondent) does not see
11 patients, he came in again intoxicated, smelling of alcohol and slurring his
12 words."
13 e. "Again on Monday March 22, 2004 he showed up intoxicated smelling of
14 alcohol, slurring his words and this time wearing a womans (sic) shirt, which he
15 thought was funny."
16 f. "Last week, on Thursday March 25, 2004 he showed up again intoxicated
17 smelling of alcohol and slurring his words."
18 g. "With this information that I have provided for you I ask that you initiate
19 an investigation into this matter so it will not continue."

20 5. On April 15, 2004 the Board notified the Respondent of this complaint. In the
21 letter the Board requested a response to the allegations and mandated an evaluation to determine
22 the Respondent's "fitness to practice."

23 6. On April 29, 2004, the board received the Respondent's reply to the complaint
24 allegations, which included and stated in pertinent part:

- 25 a. "On the evening of January 14, 2004, I was arrested for a DUI, which was
my fault."
b. "A number of things have occurred over the previous two years, . .
Namely a contentious divorce, bankruptcy, and increase in malpractice insurance
premium."
c. "On the afternoon of January 14, 2004 I purchased a bottle of liquor. I
went home and began drinking. I don't drink except for an occasional social
drink. I became intoxicated and fell asleep. When I woke up I was disoriented
and though it was 7:00A.M. In reality, it was 7:00 P.M. I got in my car and while
driving, I had a single car accident and was arrested for a DUI."

7. In the course of testifying before the Board on December 10, 2005, the
Respondent admitted that it was his intent to see patients on January 14, 2004.

8. In the course of testifying before the Board on September 17, 2005 and in relation to the same response in Finding of Fact #7, the Respondent stated, "Yeah. That's how out of it I was. I thought it was 8:30 or 7:30 in the morning, whenever it was."

9. In addition, the City of Phoenix Police report describes the Respondents lack of orientation to the actual time of the incident and relation to normal work hours.

CONCLUSIONS O F LAW

1. Pursuant to A.R.S. § 32-1800, et seq. the Arizona Board of Osteopathic Examiners in Medicine and Surgery has subject matter and personal jurisdiction in this matter.

2. The conduct and circumstances described in paragraphs 4 through 9 above constitute unprofessional conduct as defined in the following paragraphs of A.R.S. § 32-1854:

(38) Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

ORDER

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. Pursuant to A.R.S. §§ 32-1855 (E) License No. 2589 held by MICHAEL L. DUBETS, D.O., ("Respondent") shall be placed on PROBATION for no less than 5 years with the following terms and conditions of probation as set forth herein:

2. Respondent will develop a plan for aftercare treatment and monitoring which shall include, but may not be limited to, individual and/or group counseling sessions, random body fluid testing, agreement for release of treatment records and report to the Board, prohibition of the use of alcohol and controlled substances unless the latter is prescribed or coordinated by this treating physician, and submit this plan to the Board's Executive director for approval.

3. From the date of this Order, Respondent shall obtain psychiatric or psychological treatment by a therapist(s) who is either a licensed psychiatrist and/or psychologist and is selected by Respondent and approved by the board's Executive Director. Respondent shall

1 comply with the therapist recommendation for the frequency of therapy treatment sessions.
2 Respondent shall inform the Board by letter (mailed within ten days of the date of this Order) of
3 the therapist's name; and, Respondent shall undertake and fully cooperate with a program of
4 treatment established by the therapist. In the event Respondent changes therapists, he shall give
5 the Board written notice within ten (10) days of said action. Respondent shall not discontinue or
6 reduce the frequency of psychotherapy sessions until he has submitted a written request to the
7 Board and obtained Board approval.

8 4. Respondent's therapist(s) shall receive a copy of this Order and Board staff shall
9 cooperate with and disclose all relevant information in the Board's files concerning Respondent.
10 The treating therapist shall be directed by Respondent to send to the Board a detailed written
11 progress report every month for the remainder of the probation; and Respondent, shall waive any
12 confidentiality concerning his psychotherapy in order that the Board may receive full disclosure
13 of information. The expense of the aforementioned therapy and the reports to the Board by
14 Respondent's therapist shall be the sole responsibility of the Respondent.

15 5. Respondent shall provide a copy of this Order and any subsequent Orders to all
16 facilities where Respondent is currently (or subsequently) employed as a physician and/or has (or
17 subsequently receives) privileges to engage in the practice of medicine. Respondent shall
18 provide a copy of this Order to all treating physicians, dentists and or health care professionals.
19 Respondent shall continue to make the aforementioned disclosure and provide copies of this
20 Consent Order until the expiration of this Order.

21 6. Respondent shall abstain completely from the consumption of alcoholic beverages or
22 any substance with alcohol (i.e. cough syrups); and, Respondent shall not consume illicit drugs
23 or take any controlled substances (i.e., prescription only drugs), unless his treating physician
24 prescribes such medication for him with the awareness that Respondent has this substance abuse
25 problem. Respondent shall maintain a monthly log (for the duration of probation) of all
prescription only drugs taken and such log shall include the following information:

- 1 (a) the name of the medication;
- 2 (b) name of prescribing physician;
- 3 (c) reason for the medication.

4 At the first of each month, Respondent shall report by letter to the Board whether or not
5 he is taking any prescription only medication and, if so, a copy of his log reflecting the above
6 information.

7 7. Respondent shall also, as part of his probation: (A) submit to and cooperate in
8 any independent medical or psychological evaluation that is ordered by the Board for
9 Respondent and conducted by the Board's designated physician and/or psychologist which shall
10 be paid for by Respondent; and (B) appear before the Board, upon receipt of a request by written
11 or telephonic notification from the Board's executive director which shall be given at least five
12 (5) days prior to the Board meeting; and, (C) submit to random biological fluid testing and
13 promptly provide (i.e., within sixty (60) minutes of notification) required biological fluids for
14 testing and said testing shall be done at the Respondent's expense.

15 8. Respondent shall participate in a minimum of ninety (90) self-help meetings
16 through such organizations as A.A., N.A., C.A. and doctor's Caduceus group in ninety (90) days.
17 Respondent shall keep a log of all meetings attended and have the log signed by the chairperson
18 of the meeting. Respondent will provide the Board with a copy of the signed log the first of
19 every month.

20 9. Notwithstanding any of the preceding terms, Respondent is required to meet with
21 the Board at its September 2006 meeting to discuss his status/compliance with this probation.

22 10. In the event Respondent moves and ceases to practice medicine in Arizona, he
23 shall give written notice to the Board of his new residence address within twenty (20) days of
24 moving; and, the terms and duration of probation may be stayed by the Board until Respondent
25 returns to practice medicine in Arizona.

1 11. Respondent shall reimburse the Board for all expenses associated with the
2 continued monitoring of this matter.

3 12. Respondent shall continue to meet all licensing requirements such as continuing
4 medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-
5 1825.

6 13. The Board's Executive Director shall send correspondence to the appropriate
7 state and/or federal law enforcement agency disclosing information in the Board's possession
8 which may establish criminal misconduct by Respondent, i.e., illicit use of controlled substances.

9 14. Respondent's failure to comply with the requirements of this Order shall
10 constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be
11 considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in
12 the event that Respondent fails to comply with any of the requirements of this Order.

13 15. Respondent may have his license to practice as an osteopathic physician
14 restricted, suspended or revoked by the Board in the future if:

15 (A) The Board finds that Respondent does not have the requisite mental, physical and
16 emotional fitness to safely continue the practice of medicine; or,

17 (B) There are new grounds for finding unprofessional conduct concerning
18 Respondent; or,

19 (C) Fails to comply fully with the terms and conditions of this Order.

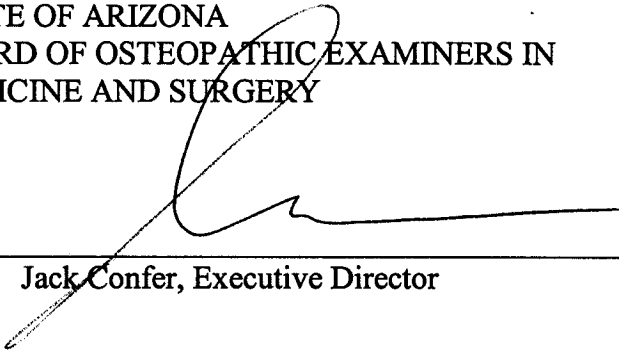
20 **NOTICE OF RIGHT TO APPEAL TO SUPERIOR COURT**

21 Respondent is hereby notified that this is a final administrative decision of the Board and
22 that the Respondent has exhausted his administrative remedies. Respondent is advised that an
23 appeal to Superior Court in Maricopa County may be taken from this decision pursuant to Title
24 12, Chapter 7, Article 6.



ISSUED THIS 6TH DAY OF APRIL, 2006.

STATE OF ARIZONA
BOARD OF OSTEOPATHIC EXAMINERS IN
MEDICINE AND SURGERY

By: 
Jack Confer, Executive Director

Original "Findings of Fact, Conclusions of Law,
and Probationary Order" filed this 6th day
of April, 2006 with the:

Arizona Board of Osteopathic Examiners
In Medicine and Surgery
9535 East Doubletree Ranch Road
Scottsdale AZ 85258-5539

Copy of the foregoing "Findings of Fact,
Conclusions of Law, and Probationary Order"
sent via certified mail, return receipt requested
this 6th day of April, 2006 to:

Michael L. Dubets, D.O.
8501 North 51st Avenue
Glendale, AZ 85302

Copies of the foregoing "Findings of Fact,
Conclusions of Law, and Probationary Order"
sent via regular mail this 6th day of
April, 2006 to:

Blair Driggs, AAG
Office of the Attorney General CIV/LES
1275 West Washington
Phoenix AZ 85007

Robert Bohm, Esquire
2141 East Camelback, Suite 222
Phoenix, AZ 85016

